

TARGETED MARKET CONDUCT EXAMINATION REPORT
AS OF JULY 31, 2005

Tri City Title, LLC
6550 W 92nd Ave
Westminster CO 80031

EXAMINATION PERFORMED BY
DIVISION OF INSURANCE STAFF
COLORADO DEPARTMENT OF REGULATORY AGENCIES
STATE OF COLORADO

**Tri City Title, LLC
6550 W 92nd Ave
Westminster CO 80031**

**TARGETED MARKET CONDUCT
EXAMINATION REPORT
AS OF JULY 31, 2005**

**Examination Performed by
Paula M. Sisneros, AIS
Bobbie Baca
Cliff Hinson**

Division of Insurance Staff

January 6, 2006

The Honorable David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner:

This targeted market conduct examination of Tri City Title, LLC was conducted pursuant to §§ 10-1-203, 10-2-804 and 10-3-1106, C.R.S., which authorizes the Insurance Commissioner to examine title insurance agents and agencies. We conducted interviews of staff and examined the Agency's records at its Loveland office located at 1624 Topaz Dr., Loveland, CO 80537. The market conduct examination covered selected business practices associated with the ownership and operation of a title insurance agency through July 31, 2005.

The following market conduct examiners respectfully submit the results of the examination.

Paula M. Sisneros, AIS

Bobbie Baca

Cliff Hinson

**MARKET CONDUCT
EXAMINATION REPORT
OF
TRI CITY TITLE, LLC
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AGENCY PROFILE

Tri City Title, LLC (Tri City or Agency) was established with the Office of the Secretary of State on May 8, 2003. Tri City obtained a Colorado resident agency license for title insurance on July 14, 2003. Its license number is 162199 and the responsible producer as of July 31, 2005 was Douglas Farr. Three individuals own Tri City: Scott Charpentier and Jim Hinojos, both unlicensed, own 25% each and Douglas Farr owns 50%. Douglas Farr holds Colorado resident producer license number 101962 and is authorized to conduct title insurance transactions*. Tri City is an affiliated business arrangement.

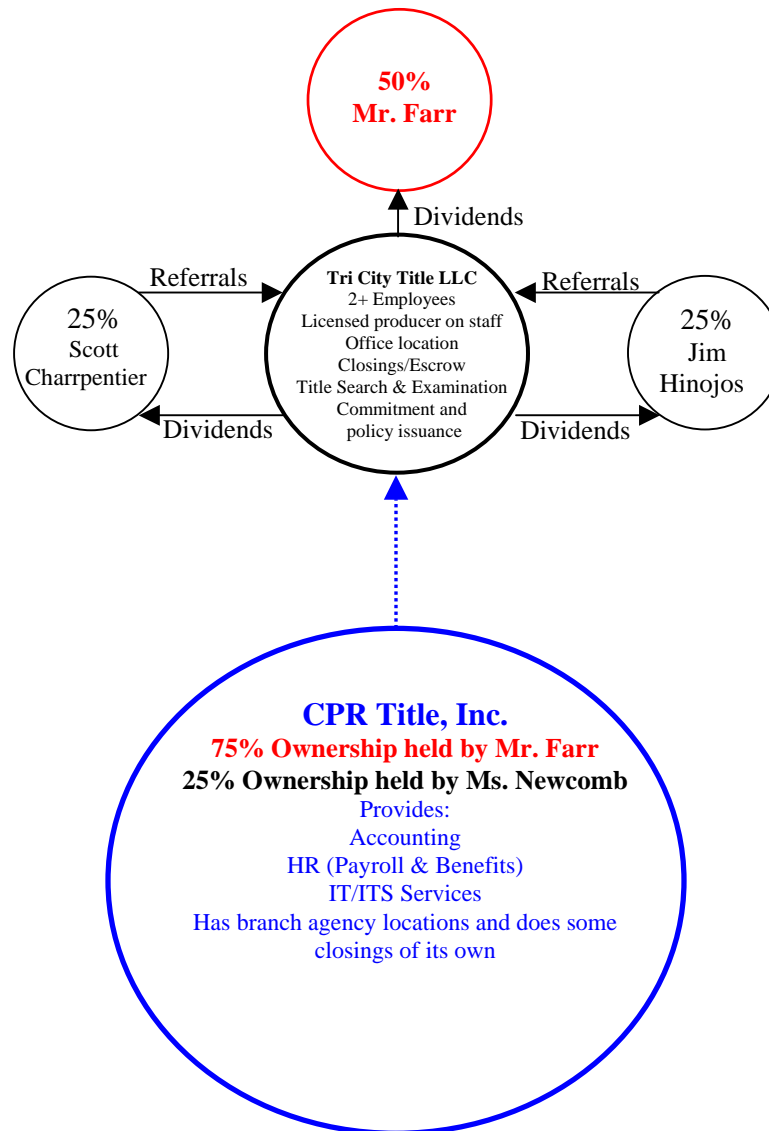
Tri City performs most of its own title services including title search, examination, commitment and policy issuance and closing and escrow services. Attorneys Title Guaranty Fund, Inc. or Dakota Homestead Title Insurance Company underwrote Tri City's title files.

CPR Title, Inc. provided accounting, human resource, payroll, benefit, and IT/ITS services to this affiliated agency.

The Colorado Commissioner of Insurance issued a summary suspension order on November 15, 2005, when the Division received information that an affiliated agency owned by Douglas Farr allegedly misappropriated escrow funds causing consumer harm. Given Mr. Farr's license was summarily suspended all affiliated agencies in which Mr. Farr is the responsible producer were also summarily suspended. To review the order, please visit the Division's website at www.dora.state.co.us/insurance.

* The Colorado Commissioner of Insurance issued a summary suspension order on November 15, 2005 listing Mr. Farr as a respondent. To review the order, please visit the Division's website at www.dora.state.co.us/insurance.

Affiliated Business Arrangement Flowchart*:



* This flowchart does not show all affiliated businesses and may not reflect all services that were provided and/or received.

PURPOSE AND SCOPE OF EXAMINATION

State market conduct examiners with the Colorado Division of Insurance (Division), in accordance with Colorado insurance law, §§ 10-1-201, 10-1-203, 10-1-204, 10-2-804 and 10-3-1106, C.R.S., which empowers the Commissioner to require any person engaged in the business of insurance to be examined, reviewed certain business practices of Tri City. The findings in this report, including all work products developed in producing it, are the sole property of the Division.

The purpose of the targeted examination was to determine the Agency's compliance with Colorado insurance law and with generally accepted operating principles related to title insurance agencies. This targeted examination was triggered by an investigation conducted by Division staff related to affiliated business arrangements. The preliminary findings from the investigation indicated a need for a more in-depth review of certain business practices to determine if the Agency was in compliance with Colorado insurance law. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. They relied primarily on records and materials maintained by the Agency and affiliated businesses, and direct interviews with owners and staff of the Agency and affiliated businesses. Most of the documents reviewed during this examination were provided by the Agency in paper form; however, some electronic data was also provided. The targeted market conduct examination covered the period from the Agency's inception through July 31, 2005.

The examination included review of the following:

Agency Operations and Management

The final exam report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties, were omitted. For the period under examination, the examiners included statutory citations and regulatory references as they pertained to title insurance agencies.

Examination findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of the Agency. Failure to identify specific Agency practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any title insurance agency or underwriter.

EXAMINERS' METHODOLOGY

The examiners reviewed the Agency's business practices to determine compliance with Colorado insurance laws and Colorado regulations. For this examination, special emphasis was given to the laws and regulations as shown in Exhibit 1.

Exhibit 1

Law/Regulation	Concerning
Sections 10-1-101 through 10-1-130	General Provisions
Section 10-1-203	Authority, Scope, and Scheduling of Examinations
Section 10-1-204	Conduct of Examinations
Section 10-2-704	Fiduciary Responsibilities
Section 10-2-804	Investigation by Commissioner
Sections 10-3-1101 through 10-3-1104.5	Unfair Competition - Deceptive Practices
Sections 10-11-101 through 10-11-123	Title Insurance Code of Colorado
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests
Regulation 1-2-1	Concerning Agent Fiduciary Responsibilities
Regulation 3-5-1	Title Insurance

EXAMINATION REPORT SUMMARY

The examination resulted in a total of two (2) findings in which the Agency did not appear to be in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings and recommendations.

Agency Operations and Management: The examiners identified two (2) areas of concern during the review of the Agency's operations and management

1. Failure to maintain a separate trust account to hold premiums to be remitted to the insurer.
2. Failure to report a change of address to the Commissioner.

A copy of the Agency's response, if applicable, can be obtained by contacting the Agency or the Division.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

TRI CITY TITLE, LLC

AGENCY OPERATIONS AND MANAGEMENT
FINDINGS

Issue 1: Failure to maintain a separate trust account to hold premiums to be remitted to the insurer.
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Section 10-2-704, C.R.S., states:

- (1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

. . . .
- (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing.

. . . .
- (3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insurers with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

Regulation 1-2-1 promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, C.R.S., states:

III. RULE:

- A. No insurance premium or refund received by an insurance agent, broker or agency by reason of the application for, issuance or termination of any particular policy may be credited to any other obligation owed by the insured to such agent, broker, agency or other insurer unless specific written authorization has been obtained from the insured to so credit, or a blanket authorization has been obtained from the insured to handle all policies and obligations from one account.
- B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. *Upon receipt the insurance producer must treat all premiums and return premiums as trust funds and segregate them from his own funds, and*
2. the insurance producer must keep an accurate record of all fiduciary funds, and
3. the insurance producer *must not treat insurance premiums or returned premiums as a personal or business asset, and*
4. *the insurance producer's financial statement should not reflect fiduciary funds as an asset or as income to the insurance producer, and*
5. an insurance producer may not use fiduciary funds as collateral for a personal or business loan, but the insurance producer may receive interest on such funds and use as a compensation balance with the financial institution, and
6. *any deposit of such premium and returned premium funds into a bank or savings account must be into a separate insurance trust account until actually remitted to the insurer or person entitled thereto.* Such deposits will be subject to the uniform fiduciary's law as delineated in § 15-1-101, et seq, C.R.S.

Colorado Division of Insurance Regulation 1-2-1 (emphasis added).

The examiners conducted interviews of some of the staff of Tri City on September 8, 2005. During these interviews the examiners received information that appears to indicate that the Agency is not in compliance with Colorado insurance law in that it is not handling insurer premiums in a fiduciary capacity. Specifically, the Agency is or was transferring or depositing title policy premiums to the Agency operating account at disbursement instead of holding them in a trust capacity until they are remitted to the insurer.

Recommendation No. 1:

Within thirty (30) days, the Agency should provide documentation demonstrating why it should not be considered in violation of § 10-2-704, C.R.S. and Regulation 1-2-1. In the event the Agency is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure compliance with the cited laws, including opening a designated trust bank account to ensure that premiums being held for remittance to the insurer are held in a trust capacity as required by Colorado insurance law. It should also provide evidence that agency personnel have reviewed section eight (8) of revised regulation 3-5-1 concerning rules regarding fiduciary duties.

Issue 2: Failure to notify the Commissioner of a change of address.
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Section 10-2-412, C.R.S., states:

- (1) Individual and insurance agency producer licensees shall inform the commissioner in writing, in a form prescribed by the commissioner, of any change of address within thirty days after the change.
- (2) Failure of a licensee to inform the commissioner of any change to the licensee's address of record or residence address shall be grounds for the assessment of a penalty.

The examiners reviewed documents on file with the Division that relate to Tri City. The business and mailing address on file with the Division is 6550 W. 92nd Ave Westminster, CO 80031. At the time of examination Tri City was not conducting business from this address. Additionally, the examiners believe this address is, in fact, supposed to be that of CPR Title, Inc. at 6350 W 92nd Ave, Westminster, CO 80031. The examiners were made aware through interviews that all of CPR Title, Inc.'s affiliated businesses ceased operations out of the Westminster office effective August 1, 2005. It appears that Tri City is not in compliance with Colorado insurance law in that it failed to notify the commissioner of a change of address.

Recommendation No. 2:

Within thirty (30) days, the Agency should provide documentation demonstrating why it should not be considered in violation of § 10-2-402, C.R.S. In the event the Agency is unable to show such proof, it should provide evidence to the Division that it has updated the Division's records to reflect its correct mailing and location addresses.

SUMMARY OF ISSUES AND RECOMMENDATIONS

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State Market Conduct Examiners

**Paula M. Sisneros, AIS
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For

**The Colorado Division of Insurance
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participated in this examination and in the preparation of this report.